

Semetis Aff.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONALD HEIMSTAEDT and TODD KORTE,

Civil Action No.:
07CV9389 (JSR)

Plaintiffs,

-against-

PREM.AIR NEW YORK, LLC, PREM.AIR GROUP
OF NEW YORK, LLC, PREM.AIR GROUP, LLC,
MCQUAY NEW YORK, LLC, GEORGE KOUTSSOS,
ERIC BERKOWITZ, MCQUAY NEW YORK PROFIT
SHARING PLAN, and XYZ TRUSTEES OF THE
MCQUAY NEW YORK, LLC 401(k) PROFIT
SHARING PLAN,

**AFFIRMATION IN
SUPPORT OF
MOTION TO
DISMISS**

Defendants.

-----X

ARTHUR J. SEMETIS, being duly sworn deposes and says that:

1. I am a member of Arthur J. Semetis, P.C., attorneys for all of the defendants who have appeared in this action.¹

2. I submit this affirmation in support of the motion to dismiss the following counts in the First Amended Complaint:

- (i) the Fourth Count for Breach of Contract against defendants George Koutsos, and Eric Berkowitz and Prem.Air Group LLC;
- (ii) the Fifth Count for Fraud and Misrepresentation against all of the defendants;

and

- (iii) the Sixth Count for Quantum Meruit against all of the defendants;
- (iv) the Seventh Count for Unjust Enrichment against all of the defendants;

¹ This firm does not represent defendant Prem.Air Group of New York LLC. It is believed that this entity does not exist.

(v) the Eighth Count for Piercing the Corporate Veil against defendants George Koutsos and Eric Berkowitz.

3. Annexed hereto as Exhibit 1 is a copy of the First Amended Complaint.
4. Annexed hereto as Exhibit 2 is a copy of a stipulation executed by the attorneys for all the parties to this action in whereby the plaintiffs have discontinued with prejudice the First Count of the Amended Complaint for Breach of Contract against the individual defendants George Koutsos and Eric Berkowitz.

5. For the reasons set forth in the annexed memorandum of law, the fourth, fifth, sixth, seventh and eighth causes of action should be dismissed as requested in the notice of motion.

Dated: February 21, 2008
New York, New York

ARTHUR J. SEMETIS, P.C.

By: 
Arthur J. Semetis. (AJS-8477)
Attorneys for Prem.Air Group of
New York LLC f/k/a McQuay
New York LLC, Prem.Air Group,
LLC, George Koutsos i/n/a
George Koutssos, Eric Berkowitz,
Prem.Air NY 401(k) Profit Sharing
Plan f/k/a McQuay New York LLC
401(k) Profit Sharing Plan i/n/a
McQuay New York Profit Sharing
Plan, and XYZ Trustees of the
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